

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 FORT WORTH DIVISION

4

5 UNITED STATES OF AMERICA,) CASE NO. 4:23-CR-00212-O
6 Government,)
7 VS.) FORT WORTH, TEXAS
8 KYUNG HEO,)
9 Defendant.) JANUARY 19, 2024
)
) 10:05 A.M.

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11 VOLUME 1 OF 1
12 TRANSCRIPT OF SENTENCING
13 BEFORE THE HONORABLE REED C. O'CONNOR
14 UNITED STATES DISTRICT COURT JUDGE

15

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1 JANUARY 19, 2024

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3 P R O C E E D I N G S

4 THE COURT: I call now Case No. 4:23-CR-212.

5 Counsel for the government is here.

6 Counsel for the defendant is here.

7 Sir, would you state your name for the record,
8 please?

9 THE DEFENDANT: Kyung Heo.

10 THE COURT: Thank you. We are here to consider
11 the sentencing in your case.

12 Counsel, did you and your client receive a copy of
13 the presentence investigation report and the addendum.

14 MR. LEHMANN: Yes, Your Honor.

15 THE COURT: And did you review those documents
16 with your client?

17 MR. LEHMANN: Yes, Your Honor.

18 THE COURT: Did the government receive these as
19 well?

20 MS. MONTES: Yes, Your Honor.

21 THE COURT: So why wouldn't you agree to a Rule 20
22 transfer of this case?

23 MS. MONTES: Judge, as a beginning matter, when we
24 reached out to the Eastern District, they indicated that the
25 stage of the investigation that they were in was very early,

1 because of our arrest that identified him in those other
2 robberies. So they were just starting their investigation.
3 Whereas, we were already running with our time line.

4 So once they indicated that they were not
5 agreeing, that sort of, in a way, stops our ability to do
6 so.

7 THE COURT: So they did not agree to the Rule 20?

8 MS. MONTES: Correct.

9 THE COURT: It was them?

10 MS. MONTES: Initially, yes, correct. We
11 indicated we were not sure if we would agree or not, but
12 once they said they were not in a position to agree to a
13 Rule 20, then our hands were tied. There's nothing we could
14 do.

15 THE COURT: All right. Do you wish to present any
16 evidence or arguments on your objections?

17 MR. LEHMANN: No, Your Honor.

18 THE COURT: Okay. I'm going to overrule those
19 objections not already accepted by the addendum.

20 I'm going to adopt the fact findings in these
21 documents. I'm going to adopt the probation officer's
22 conclusions as to the appropriate guideline calculations and
23 determine that they should be as follows: Total offense
24 level of 24; Criminal History Category of II; an
25 imprisonment range of between 57 and 71 months; a supervised

1 release range of one to three years; and a fine range of
2 between 20,000 and \$200,000.

3 Does the government wish to be heard on
4 sentencing?

5 MS. MONTES: Judge, only briefly. Just to add, in
6 our response to the sentencing memorandum, I did not include
7 in there that we were also not agreeing to any sort of
8 concurrent sentence.

9 And based on the case law, we don't believe the
10 Court can impose concurrent or consecutive sentence for an
11 anticipated, but not yet imposed federal sentence in another
12 federal court. Other than that, we ask that a guideline
13 sentence be imposed in this case.

14 THE COURT: Very good. Thank you.

15 Counsel.

16 MR. LEHMANN: Thank you, Your Honor.

17 Your Honor, we strongly urge the Court to downward
18 vary in this case. Just over one week ago we received a
19 psychological evaluation from Dr. Kristi Compton, Forensic
20 Clinical Psychologist in DFW. She's probably the most
21 credible psychologist that I've worked with in almost 20
22 years.

23 She found Mr. Heo has been suffering from both
24 schizophrenia and depression for some time. She opined that
25 these mental health conditions had a significant impact on

1 his cognitive and emotional functioning and was a
2 contributing factor in him deciding to commit the offense.

3 Most importantly though, she found that his
4 prognosis could be significantly improved with medical
5 mental health intervention.

6 As the Court is well aware, Mr. Heo comes from a
7 loving, very supportive family. As the character letters
8 reflect, he's got a long, well-chronicled history of being a
9 mentor in his church and being an emotional rock for his
10 family and friends.

11 In recent years, Mr. Heo began exhibiting odd
12 behaviors, impulse control problems. The family immediately
13 noticed something was off.

14 When I met Mr. Heo, there was a certain
15 incongruity that met me right away. On one hand, I met
16 this very mild-mannered, forthcoming, honest individual. I
17 met his family who was very put together. And then I just
18 read this charge that just didn't pair up. So something was
19 clearly off. One week ago, we just found out why, he had
20 been suffering from schizophrenia.

21 Mr. Heo and his family are still processing the
22 reality of the diagnosis. On one hand, it's troubling to
23 learn that your loved one or yourself is suffering from a
24 mental illness.

25 On the other hand, there's a sense of relief.

1 Finally an explanation and a treatment plan and actually an
2 end in sight. There's hope at the end of the tunnel.

3 Mr. Heo will not recidivate or be a risk for
4 recidivism once he is treated. We know that he is treatable
5 based upon the opinion by Dr. Compton.

6 Unfortunately, we don't know when Mr. Heo is going
7 to get this treatment. As the Court noted, upon the
8 sentence here today, there's already a hold in place out of
9 the Eastern District. So he will be extradited to the Plano
10 Division for the Eastern District of Texas where he may
11 languish in a county jail without any mental health services
12 for a year, maybe a year and a half.

13 I don't how long their dockets run, but clearly
14 they don't run fast enough or adequately enough to give him
15 the mental health services that he needs. That's probably
16 the most punitive aspect about all of this is that we know
17 what the cure is, but we simply can't give it to him.

18 So he may get worse over the pending year or year
19 and a half or however long it takes for him to get his BOP
20 designation. Furthermore, we know that the Bureau of
21 Prisons has its own limitations.

22 We are going to ask the Court for a
23 recommendation, a non-binding order that Mr. Heo serve his
24 sentence at a Federal Medical Center. But again, the BOP
25 does have its limitations.

1 We therefore ask the Court to consider a downward
2 variance. We had filed an objection asking for a downward
3 departure, but we are going to reurge it as a variance.

4 Under the new sentencing guidelines, Section
5 4A1.3, a policy statement states that courts should consider
6 a downward departure. Here we are urging it in the form of
7 a downward variance for a prior conviction for a simple
8 possession of marijuana.

9 That is one that does not exhibit any features
10 that would be consistent with distribution. Such was the
11 case with Mr. Heo years ago in college. I believe he
12 receives one criminal history point in paragraph No. 34 of
13 the presentence report.

14 If he were not to receive that criminal history
15 point, he would be one Criminal History Category over a
16 Criminal History Category I.

17 We therefore would urge the Court to consider
18 following the policy statement under 4A1.3 and consider
19 sentencing Mr. Heo at one criminal history category down.
20 That is from two to one, thereby reducing the guideline
21 range from 51 to 63 months.

22 We then would ask the Court to downward vary for
23 all of the reasons that we previously stated in the
24 sentencing memo and here today at argument.

25 We also urge the Court to order this sentence to

1 run concurrently with the yet unimposed sentence that will
2 come through the indictment that is pending in the Eastern
3 District of Texas.

4 We respectfully disagree with opposing counsel.

5 We do not believe that Setzer binds the Court. On the
6 contrary, we believe that Setzer is silent as to the issue
7 as to whether or not one court can order its sentence to run
8 concurrently or consecutively with the yet-to-be-imposed
9 sentence in another district.

10 We ask this so that Mr. Heo can discharge from the
11 Bureau of Prisons as soon as possible. Had these
12 prosecutions been coordinated, we would have a different
13 situation.

14 Yet, as it stands now, he's got to go start this
15 process all over again in a district that runs twice as
16 slowly as this division.

17 I hope that he gets competent counsel there. I
18 hope that he gets a prosecutor who is sympathetic to the
19 plight that he faces for the mental health concerns and
20 needs and treatment that he deserves.

21 I hope that he doesn't get stacked or, you know,
22 face more punishment than is greater than necessary. We
23 would just simply ask this Court to do what is in its power
24 to help effectuate those ends. Thank you, Your Honor.

25 THE COURT: Thank you.

1 Sir, do you wish to speak on your behalf?

2 THE DEFENDANT: Yes, sir. I would like to first
3 apologize. Growing up I only come across as forms of candid
4 jokes between my friends at the high school, but when
5 something like my crime unfolded, it was no longer just
6 filled with hopeful and wild imaginations. Rather, it
7 instilled intimidation. And to put anyone into that
8 position was a horrible decision I made through my childish
9 act.

10 So I would like to take this opportunity to
11 apologize to the employees and also to the responding
12 officers. I pray and hope that you all were and are able to
13 go back to living and working like normal, unaffected as
14 much as possible. I'm sorry.

15 During the time between my arrest and today, I was
16 able to look back at my life and point out what may have led
17 me here. The meetings and evaluations I have had with my
18 attorney, Mr. Lehmann, Mitigation Specialist Shay, and with
19 Dr. Compton, through that I was able to learn to accept that
20 I'm old enough and mature enough to stop having the same
21 greedy and overreaching thoughts from my childhood and to
22 find stability in life.

23 I have a very loving and supportive family to whom
24 I am very apologetic and overly grateful for and also make
25 sure to receive the proper treatment I need for my mental

1 health condition.

2 Again, I would like to say sorry and that I am
3 regretful and ashamed in the decisions I've made, and I ask
4 for mercy and forgiveness, as I'll do everything it takes to
5 never cross such a line.

6 THE COURT: Thank you.

7 MR. LEHMANN: Your Honor, my client's mother has
8 indicated that she would like to address the Court. If she
9 could come up briefly? Thank you.

10 THE COURT: Ma'am, would you raise your hand to be
11 sworn, please.

12 (The oath was administered.)

13 MS. CHUNG: I do. My name is Angie Chung, and I'm
14 the mother of Kyung Heo. Thank you, Your Honor, for giving
15 me this opportunity to speak. I know you've read all our
16 letters.

17 But I traveled all the way from Illinois last
18 night to show in person Kyung Heo has our family support and
19 love, and we've been together, and be always by his side.

20 It's kind of sad. He deeply regrets what he did,
21 and he knows what he did wrong. But Kyung is still a kind
22 young person and the son that we all know.

23 I please ask Your Honor for your consideration for
24 leniency and allowing Kyung a chance to correct his actions.

25 I'm certain that Kyung is committed to making

1 amends and growing into a better and positive citizen. I'm
2 so sure about that and confident. Thank you.

3 THE COURT: Thank you, ma'am.

4 All right. I will now state the sentence
5 determined pursuant to Title 18 U.S.C., Section 3553.

6 I accept the plea agreement in this case.

7 It will be the judgment of the Court that the
8 defendant is committed to the custody of the Federal Bureau
9 of Prisons for a period of 57 months.

10 I do not order a fine.

11 I do order that the defendant make restitution --
12 that there is no restitution, I'm sorry. The money has been
13 returned.

14 That the defendant pay a \$100 mandatory special
15 assessment.

16 That, upon his release, he be placed on supervised
17 release for a term of three years. While on release, he
18 shall comply with the terms of supervision set forth in
19 Miscellaneous Order No. 64 and as outlined in Part G of the
20 presentence report.

21 Is there any objection from the government to this
22 sentence?

23 MS. MONTES: No, Your Honor.

24 THE COURT: From the defendant?

25 MR. LEHMANN: No, Your Honor.

1 We would ask for two more housekeeping issues.

2 First would be a recommendation that he participate in the
3 Residential Drug Abuse Program. And second, for a
4 non-binding recommendation at FMC Fort Worth.

5 THE COURT: I will for sure recommend that he be
6 able to participate in mental health treatment services in a
7 facility that will accommodate that. To the extent that
8 facility is local, I will include my standard local
9 placement.

10 MR. LEHMANN: Thank you, Your Honor.

11 THE COURT: Now, you have the right to appeal this
12 sentence. You also have the right to apply for leave to
13 appeal *in forma pauperis*, if you are unable to pay the cost
14 of an appeal.

15 And if you decide to appeal, your notice must be
16 filed within 14 days. Please instruct your counsel on how
17 you wish to proceed in that regard.

18 Please follow your client's instructions on that
19 issue.

20 Anything else from the government?

21 MS. MONTES: No, Your Honor.

22 THE COURT: Anything else from the defendant?

23 MR. LEHMANN: No, Your Honor.

24 THE COURT: Thank you both for being here.

25 Good luck to you, sir.

1 We are in recess.

2 (The proceedings concluded at 10:20 a.m.)

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2 REPORTER'S CERTIFICATE
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4 I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that
5 the foregoing is a true and correct transcript from
6 the record of proceedings in the foregoing entitled
7 matter to the best of my ability to hear.

8 Further, due to the COVID-19 pandemic, some
9 participants are wearing masks, and/or appeared via
10 videoconferencing, so proceedings were transcribed to the
11 best of my ability.

12 I further certify that the transcript fees format
13 comply with those prescribed by the Court and the Judicial
14 Conference of the United States.

15 Signed this 21st day of February, 2024.

16
17 _____/s/ Zoie Williams_____
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MR. LEHMANN: [8] 4/14
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